IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Rameshwar Lal & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1348/2002)

2. State of Rajasthan Vs. Rameshwar Lal & Others
(D.B. Criminal Appeal No.100/2003)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 1-10-2002 in Sessions Case No.20/2001 (68/2000) passed by Shri Yashpal Singh, RHJS, Additional Sessions Judge No.2, Sikar, Camp Sri Madhopur.

Date of Judgment: August 09, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Ashwin Garg, for the appellants and accused respondents.

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Anoop Dhand, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated October 1, 2002 of the learned Additional Sessions Judge No.2 Sikar Camp Sri Madhopur whereby Rameshwar Lal, Nathu Ram and Daulat Ram @ Dholu Ram, appellants herein, were convicted and sentenced under section 302/34 IPC to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer simple imprisonment for one month. The State of Rajasthan however preferred appeal No.100/2003 challenging the acquittal of co-accused persons.

2. It is the prosecution case that on June 22, 2000 at 10 AM

informant Jhuntha Ram (Pw.13) submitted a written report (Ex.P-19) at Police Station Khandela to the effect that in village Dhani Ramdariyab, Prabhu (since deceased) stored Kurdi (manure) over the land of Balaji. Around 6.00 AM Jagu Ram, Rameshwar, Nathu, Shankar, Daulat Ram, Dhuda Ram, Chhotu Ram, Chhoti, Nanchi, Patasi, Bhagli, Vimla and other family members armed with lathis, axes and Kasias came over there and started removing manure. Prabhu then reached to the land and made intervention. Rameshwar then inflicted lathi-blow on the neck of Prabhu as a result of which he fell down, thereafter Jagu Ram, Nathu Ram, Shankar Ram gave lathi-blows on his legs, Daulat, Dhudaram and Chhotu Ram caused injuries with Kasia and spade. Prabhu died on the spot. On that report case under sections 147, 148, 149, 447 and 302 IPC was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.2, Sikar Camp Sri Madhopur. Charges under sections 148 and 302/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 13 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. One witness Sanwar Mal Patwari (Dw.1) in support of defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. We have heard the submissions advanced before us and scanned the material on record.

4. Death of Prabhu was undeniably homicidal in nature. A look at

Post Mortem Report (Ex.P-1) reveals that following ante mortem injuries were found on the dead body:-

1.Swelling 18 x 12 Rt. thigh lower 1/3 near knee joint.
2. 10 x 8cm Rt. leg lower 1/3 near ankle joint.
3. Lacerated wound 0.8 x 0.3 x bone deep corresponding to 6-7rib Rt. posterior lat.
4. 2 x 0.8 cm Rt. thigh lower 1/3 bone deep.
5. Bruise 8 x 3cm under Rt. thigh mid 1/3.
6. 11 x 4 cm back corresponding to 6-7 Rib Lt.
7. Abrasion 3 x 1cm Rt. knee joint
8. 2 x 0.5cm Rt. knee joint.
9. 0.8 x 0.3cm Rt. knee back
11. 1 x 1cm Lt. ankle joint (Med)
12. 3 x 1cm Lt. side (Med)
13. 3 x 1cm back of neck
14. 2 x 0.5cm back
15. 2 x 0.5cm Back.

In the opinion of Dr. B.P.Agrawal (Pw.1) the cause of death was hemorrhagic shock due to injury to liver, Rt.lung & shaft of femur.

5. Further look at the record reveals that the agricultural land where incident occurred belonged to the accused party Nola Ram (Pw.2) in his cross examination admitted this fact:-

"यह सही है कि जिस जमीन पर कुरडी पडी थी उसका खाता जग्गू, गिरधारी व रामेश्वर के नाम से है। मेरे को इस बात का पता है कि इस जमीन का मुकदमा प्रभु व मुलजिमान के बीच मे चलता था। यह भी सही है कि उस मुकदमे में रामेश्वर वगैरह जीत गए।"

Mooli Devi (Pw.4) deposed that Prabhu stored manure on the land and the accused party when made attempt to remove the manure Prabhu obstructed and was given beating. Fatal injury was attributed to accused Daula:-

दौला ने प्रभु मे मंगरों पर कूल्हों पर मारी।

This witness also admitted that Khata of land belonged to Rameshwar and Jaggu.

6. The questions that arise for consideration at this juncture is as to whether the appellants had shared common intention in causing injuries to the deceased and whether the act of appellants came within the purview of culpable homicide amounting to murder?

7. The question of common intention is a question of inference, to be drawn from the facts and circumstances of the case. In this connection, two important considerations should always be borne in mind:-

(i) Whether the assault is sudden or appears to be deliberate.
(ii) Whether it is a case of a few casual injuries or a case of a number of injuries inflicted by a number of persons.

In the case on had unquestionably it was Prabhu (deceased) who had trespassed over the land belonging to accused party by storing manure. The accused party had every right to remove the manure from their land. In such a situation it cannot be held that the appellants had shared common intention in causing injuries to Prabhu. Each appellants may be held liable for his individual act.

7. It is contended by learned counsel for the appellants that since Prabhu committed trespass over the land of appellants they had right of private defence of the property and in exercise of such right if death was caused, the appellants could not have been convicted. We find no merit in

this submission. In view of section 103 IPC the right of private defence will not be extended to the causing of death of the person who committed such acts, if the act of trespass is in respect of an open land (vide Jassa Singh v. State of Haryana 2002 Cr.L.J. 563 (SC).

9. As injury on back of deceased that ultimately proved fatal, is attributed to appellant Daulat @ Dholu, he can be held liable for the offence under section 304 Part II since he can be attributed knowledge that injury caused by him could kill the deceased. Other appellants viz.Nathu Ram and Rameshwar are found guilty under section 323 IPC.

10. For these reasons, we dispose of instant appeals in the following terms:-

(i) We partly allow the appeal of appellant Daulat Ram @ Dholu Ram and instead of section 302/34 we convict him under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period of more than six years, the ends of justice would be served in sentencing him to the period already undergone by him in confinement. Appellant Daulat Ram @ Dholu Ram , who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(ii) We partly allow the appeal of appellants Nathu Ram and Rameshwar Lal and while acquitting them of the charge under section 302/34 we convict and sentence each of them under section 323 IPC to suffer simple imprisonment for four months. Since both the appellants have already suffered the sentence awarded to them and they are on bail, they need not surrender and their bail bonds

stand discharged.

(iii) We find no merit in the appeal No.100/2003 preferred by the State of Rajasthan and the same stands accordingly dismissed.

(iv) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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